



US PATENT APPLICATION
Docket No. CRN01-UTL

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS & INTERFERENCES

In re application of: LISA A. CORNISH

Serial No. 09/782,371 Examiner: Comstock, David C.
Filed: February 12, 2001 Group Art Unit: 3732
For: HARD HEAD FOIL CAP
Date: May 18, 2004

CERTIFICATE OF MAILING UNDER 37 CFR 1.8

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WENDY M. FOX

Mail Stop Appeal Brief-Patents
The Honorable Commissioner for Patents
P.O. Box 1450
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REPLY BRIEF OF THE APPELLANT

STATUS OF CLAIMS.

The Examiner's Answer agrees with Applicant's status of the claims.

STATUS OF AMENDMENTS.

No amendments have been filed subsequent to the final rejection.

SUMMARY OF INVENTION.

The Examiner's Answer agrees with Applicant's summary of the invention.

ISSUES.

The Examiner's Answer agrees with Applicant's summary of the issues.

Additionally, Issue 4 has been resolved as the Examiner, in the Examiner's Answer, withdrew the rejection to Claims 8, 12 and 16. See Examiner's Answer at page 3.

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GROUPING OF CLAIMS AND 1.192(C)(7) STATEMENT

Applicant agrees with the Examiner's proposed modification of the Grouping of Claims. The Claims should be grouped as follows: Group I, Claims 1-4, 7; Group II, Claim 5; Group III, Claims 6, 9, and 11; Group IV, Claim 8; Group V, Claims 10, 14; and Group VI, Claims 12 and 16; and new Group VII containing Claims 11 and 15.

RESPONSE TO EXAMINER'S ARGUMENT

I. The 1/64" to 1/4" slit width range

The 1/64" to 1/4" slit width range is a feature of every Group. Group I can be decided wholly on this issue alone. In the Answer, the Examiner contends that "ANDERSON must have a slit width that is at least 1/64 inch when closed" and alternatively that "even if ANDERSON is not considered as inherently disclosing the noted slit width, it still would have been obvious for a person of ordinary skill in the art to modify it to have such a width." See Examiner's Answer at pages 5-6.

Anderson teaches a hair treatment cap for selectively treating locks of hair, provided with a plurality of clamping means. A clamp is made of a fixed element, which is a substantially rigid metal, plastic, or like substance, in conjunction with a movable element which acts like the opening of a jaw for the clamp. Anderson requires that "the lock of hair is firmly clamped in position with a substantially fluid-tight seal whereby there is little or no likelihood that treating solution will seep downwardly through the clamp into contact with hair beneath the opening." See Anderson, col. 3, lines 20-28. According to Anderson, the clamp elements are held in clamping engagement by locking means, with a latch having a cam-shaped sector, which rotates, and which holds hair in a fluid type manner "preventing seepage of the treating agent under the cap". See Anderson, col. 3, lines 29-41. Suitable clamps include a bifurcate spring clip with two jaw elements. Id.

The Examiner contends that Applicant's argument is "spurious". See Examiner's Answer at page 5. However, the Examiner's Answer does not appear to address Applicant's argument that:

"The slit width of 1/64" to 1/4" limitation is not present in Anderson nor rendered obvious by Anderson because Applicant's invention does not have a clamp, as taught in Anderson. In Applicant's invention, the width remains unchanged in use as the slit is not closed (except in the case of the ZIP LOCK type partial slit closure, in which case the slits are partially closed). Anderson requires that the slits be clamped shut."

See Appellant's Brief at page 4; cf. Examiner's Answer at pages 4-6.

Accordingly, the rejections are in error.

II. The ZIP LOCK type partial slit closure

The ZIP LOCK type partial slit closure is a feature of Groups IV and VI, Claims 8, 12 and 16. The Examiner withdrew the rejections of Claims 8, 12 and 16. See Examiner's Answer at page 3.

III. The zig-zag shaped slits

The zig-zag shaped slits is a feature of Groups II and V. The Examiner contended that "applicant has not disclosed that the zig-zag shape solves any stated problem or is for any particular purpose." See Office Action at page 4. The Examiner further stated that "the zig-zag shapes does not appear to be anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious."

See Office Action at page 4. In the Answer, the Examiner contends that the zig-zag shape is "nothing more than obvious modification[]." See Examiner's Answer at page 6.

Here, Applicants invention, with respect to the zig-zag, serves the purpose of imparting a zig-zag design to the hair of the person whose hair is being colored. See Specification p. 2, Ins 19-22, p 3, Ins 8-11 & 23-25, pg 4, Ins 14-20, pg 6, Ins 9-15. Thus, it has a functional purpose not addressed by either Anderson or Sanzo, nor mentioned or even suggested by Anderson or Sanzo. Moreover, Anderson is contrary to a zig-zag

shape because the straight clamps disclosed and explicitly taught in Anderson preclude a zig-zag shape. Accordingly, the rejections were in error.

IV. The ½" to 2" slit spacing range

The ½" to 2" slit spacing range is a feature of Groups III, V, and VII. In the Answer, the Examiner contends that the slit spacing is "nothing more than obvious modification[]." See Examiner's Answer at page 6. Notably, optimum range between Anderson's jawlike clamps will not be the optimum range between Applicant's slits. It is submitted that an optimum range for Anderson will not correspond to an optimum range for Applicant's invention, and thus, Applicant's range is not rendered obvious by Anderson. Accordingly, the rejections were in error.

SUMMARY

For the foregoing reasons, Appellant believes that the Examiner's rejections of Claims 1-17 were erroneous, and reversal of the decisions is respectfully requested.

Respectfully submitted,

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